

THERAPHARMA, INC.,

Opposer,  
-versus-

Inter Partes Case No. 14-2009-000279  
Case Filed: 01 December 2009

Opposition to:  
Appl'n. Serial No. 4-2009-001234  
Date Filed: 06 February 2009  
Trademark: "VASSAPRO"

ULTRAMED PHARMA, INC.,  
Respondent-Applicant.

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Decision No. 2012- 30

## DECISION

THERAPHARMA, INC. ("Opposer"), a domestic corporation duly organized and existing under the laws of the Philippines, with principal address at 3<sup>rd</sup> floor, Bonaventures Plaza, Ortigas Avenue, Greenhills, San Juan City, filed on 01 December 2010 an opposition to Trademark Application No. 4-2009-001234. The application, filed by ULTRAMED PHARMA, INC., ("Respondent-Applicant"), a domestic corporation with principal address at 3<sup>rd</sup> Floor, No. 141 Scout De Guia St., Kamuning Quezon City, seeks the registration of the mark "VASSAPRO" for use as brand name for the generic name of trimetazidime with 29 mg, as its dosage strength falling under class 5 of the International Classification of Goods.

The Opposer's alleges the following, among other thing:

- "7. The mark 'VASSAPRO' owned by Respondent-Applicant so resembles the trademark 'VASCPRO' owned by Opposer, which was applied for registration with this Honorable Bureau prior to the application of the mark 'VASSAPRO'.
- "8. The mark 'VASSAPRO' will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark 'VASSAPRO' is applied for the same class of goods as that of Opposer's trademark 'VASCPRO', i.e. Class 05 of the International Classification (Pharmaceutical Products).
- "9. The registration of the mark 'VASSAPRO' in the name of the Respondent-Applicant will violate Sec. 123 of the IP Code, which provides, in part, that a mark cannot be registered if it:
  - (d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:
    - (i) The same goods or services, or
    - (ii) Closely related goods or services, or
    - (iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;
- "10. Under the above-quoted provision, any mark, which is similar to a registered mark, shall be denied registration in respect of similar or related goods, if the mark applied for nearly resembles a registered mark that confusion or deception in the mind of the purchasers will likely result.

The Opposer's evidence consists of the copies of the pertinent pages of the "IPO E-Gazette", Acknowledgment Receipt issued by the Intellectual Property Office of the Philippines, and Copy of Notice of Allowance, dated 25 August 2009, allowing the publication in the "IPO E-Gazette" of the trademark application for the mark "VASCPRO".

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 05 February 2010. However, the Respondent-Applicant did not file its Answer. Rule 2, Sec 11 of the Regulation on Inter Partes Proceedings, as amended, provides:

Section 11. Effect of failure to file an Answer.-In case the Respondent-Applicant fails to file an answer, or if the answer is filed out of time, the case shall be decided on the basis of the Petition or Opposition, the affidavit of the witnesses and documentary evidence submitted by the Petitioner or Opposer.

It is emphasized that the objective of a trademark is to identify or to distinguish the Goods or products of the applicant from the goods or other parties and to give protection to the owners of trademarks. A trademark means any visible sign capable of distinguishing the goods of an enterprise. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed, to secure to him, who has been instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his products.

In this regard, Section 123.1 (d) of R.A. No.8293, also known as the Intellectual Property Code of the Philippines ("IP Code") provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date in respect of the same goods or services or closely related goods or services, or if it nearly resembles such a mark as to be likely to deceive or cause confusion.

Records show that at the time the Respondent-Applicant filed its trademark application on 06 February 2009, the Opposer has already an existing application for the registration of the mark VASCPRO (Application Serial No. 4-2008-009154). The Opposer's application, filed on 30 July 2008, covers pharmaceutical products under Class 5 of the International Classification of goods, exactly the same goods indicated in the Respondent-Applicant's application.

The question is: Are the competing marks, as shown below, identical or similar, or so resemble each other that confusion or deception is likely to occur?

This Bureau finds that the Respondent-Applicant's mark is a colorable imitation of the Opposer's. The slight difference in the spellings is inconsequential to the effect on the eyes and ears, and memory. It is established by jurisprudence that confusion cannot also be avoided by merely dropping, adding or changing one of the letters of a registered mark. That likelihood of confusion or even deception occurring is enhanced by the fact that the goods covered by the marks are likewise the same pharmaceutical products under Class 5. The likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof.

Accordingly, this Bureau finds that the Respondent-Applicant's trademark Application is proscribed by Section 123. (d) of the IP Code.

It is stressed that the Respondent-Applicant was duly notified and given an opportunity to defend its trademark application. However, it chose not to, leaving this case to be resolved on the basis of the opposition and evidence submitted by the Opposer.

WHEREFORE, premises considered, the opposition is, as it is hereby SUSTAINED. Let the filewrapper of the Trademark Application No. 4-2009-001234 together with a copy of this DECISION, be returned to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Makati City, March 25, 2011